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Nos. 118, 414

In the Supreme Court of the United States

OCTOBER TERM, 1929

FLORSHEIM BROTHERS DRY GOODS COMPANY, LTD., PETITIONER

v.

THE UNITED STATES OF AMERICA

THOMAS W. WHITE, COLLECTOR OF INTERNAL REVENUE, PETITIONER

v.

HOOD RUBBER COMPANY

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURTS OF APPEALS FOR THE FIFTH CIRCUIT AND THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES AND THE COLLECTOR OF INTERNAL REVENUE

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No. 118

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THE UNITED STATES OF AMERICA

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BRIEF FOR THE UNITED STATES AND THE COLLECTOR OF INTERNAL REVENUE

OPINIONS BELOW

In case No. 118 the opinion of the District Court for the Western District of Louisiana (R. 15–21) is reported in 26 F. (2d) 505, and the opinion of the

Circuit Court of Appeals for the Fifth Circuit (R. 38–40) is reported in 29 F. (2d) 895.

In case No. 414 the opinion of the District Court for the District of Massachusetts (R. 18–20) is reported in 28 F. (2d) 54, and the opinion of the Circuit Court of Appeals for the First Circuit (R. 25–31) is reported in 33 F. (2d) 739.

On December 9, 1929, this Court entered an order advancing case No. 414 to be heard on January 13, 1930, with No. 118 as one case.

JURISDICTION

The judgment of the Circuit Court of Appeals in case No. 118 was entered on December 19, 1928 (R. 40), and petition for rehearing was denied March 1, 1929. (R. 41.) Petition for writ of certiorari was filed May 31, 1929, and certiorari was granted on October 14, 1929. (R. 41.)

The judgment of the Circuit Court of Appeals in case No. 414 was entered June 25, 1929. (R. 31.) Petition for writ of certiorari was filed September 23, 1929, and certiorari was granted October 28, 1929. (R. 31.)

The jurisdiction of this Court is conferred by Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

The two cases present identical questions: (1) Whether the period of limitations for the assessment and collection of taxes provided by Section

250 (d) of the Revenue Act of 1921 begins at the time of the filing of a tentative income tax return on form 1031T; (2) whether an additional tax for the year 1918, assessed within the statutory period as extended by waiver and subsequent to the effective date of the Revenue Act of 1924 may be collected, pursuant to Section 278 (d) of the Revenue Acts of 1924 and 1926, at any time within six years of the assessment.

STATUTES AND REGULATIONS INVOLVED

The pertinent provisions of the statutes and Treasury Regulations involved are contained in the appendix to this brief.

STATEMENT

The facts in these two cases are substantially the same. In each case a tentative income tax return on form 1031T for the taxable year 1918 was filed, and an extension of time for filing a completed return was granted. Within the extended period a completed return was filed. Before the existing five-year period for the assessment and collection of the tax had expired, a waiver was executed extending the statutory period for one year. Within that six-year period (as reckoned from the filing of the completed return, but more than six years after the filing of the tentative return) and subsequent to the effective date of the Revenue Act of 1924 (June 2, 1924), an assessment was made by the Commissioner. The tax was collected more than six years after the filing of either the tentative or the com-

pleted return, but within six years of the date of the assessment.

In each case claim for refund was filed and rejected and the taxpayer brought action in the District Court to recover the tax on the ground that assessment and collection thereof were barred by the statute of limitations.

THE FLORSHEIM CASE, NO. 118

Prior to March 15, 1919, the taxpayer, a Louisiana corporation, filed a tentative income tax-return for the year 1918. (R. 1, 15.) This return, Form 1031–T, entitled "Tentative return and estimate of corporation income and profit taxes and request for extension of time for filing return" showed merely an estimated tax of $60,000 and the payment therewith of $15,000, one-fourth of that amount. (Exhibit, p. 14, R. 30–31.) An extension of time was granted, and the taxpayer filed its completed return on June 16, 1919. (R. 15, 27, Exhibit, pp. 1–13.)

Under date of March 1, 1924, the taxpayer and the Commissioner of Internal Revenue executed an instrument in the following form (R. 15, 31):

INCOME AND PROFITS TAX WAIVER

Attach.
IT: CA:–2334–6. 1918.

Date: March 1, 1924. 371.

In pursuance of the provisions of subdivision (d) of Section 250 of the Revenue

Act of 1921, Florsheim Bros. Dry Goods Co. Ltd., of Shreveport, La., and the Commissioner of Internal Revenue, hereby consent to a determination, assessment, and collection of the amount of income, excess-profits or war-profits taxes due under any return made by or on behalf of the said Florsheim Bros. Dry Goods for the year 1918 under the Revenue Act of 1921, or under prior income, excess-profits or war-profits tax Acts, or under Section 38 of the Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," approved August 5, 1909. This waiver is in effect from the date it is signed by the taxpayer and will remain in effect for a period of one year after the expiration of the statutory period of limitation, or the statutory period of limitation as extended by any waivers already on file with the Bureau, within which assessments of taxes may be made for the year or years mentioned.

[SEAL.] THE FLORSHEIM BROS.
DRY GOODS CO. LIMITED,
Taxpayer.
By SEYMOUR L. FLORSHEIM, *Pres.*

D. H. BLAIR, *Commissioner.*

The additional tax here involved, in the amount of $11,282.15, was assessed on June 10, 1925, and was paid under protest in installments between August 28, 1925, and December 30, 1925. (R. 4, 27,

15–17.) Claim for refund was filed and the taxpayer instituted this action in the District Court for the Western District of Louisiana against the United States, as the Collector by whom the tax was collected was not then in office. (R. 1–12.)

The District Court, sitting without a jury, held that the assessment and collection of the tax were made opportunely and entered judgment for the United States. (R. 15, 21.) The Circuit Court of Appeals affirmed the judgment of the District Court. (R. 40.)

The United States did not oppose the taxpayer's petition for writ of certiorari in this case, but filed a memorandum stating that while the decision of the court below is believed to be correct, it is in conflict with the decision of the Circuit Court of Appeals for the First Circuit in *White* v. *Hood Rubber Co.*, 33 F. (2d) 739, on the question of the effect of a tentative return on the period for assessment of taxes.

THE HOOD RUBBER COMPANY CASE, NO. 414

The taxpayer, a Massachusetts corporation, filed a tentative return of its income and excess-profits tax for the year 1918 on form 1031T on March 14, 1919. This instrument, entitled "Tentative return and estimate of corporation income and profit taxes and request for extension of time," showed merely an estimated tax of $300,000 and was accompanied by respondent's check for $75,000, one-fourth of that amount. The time for filing a completed return was

extended and the completed return was filed on July 14, 1919. (R. 14–15.) In the meantime the Commissioner had demanded and the taxpayer had paid a second quarterly installment of $75,000. (R. 15.) Under date of January 26, 1924, the taxpayer and the Commissioner of Internal Revenue executed an instrument in the following form (R. 7, 19):

> JANUARY 26, 1924.
>
> Income and profits tax waiver:
>
> In pursuance of the provisions of subdivision (d) of section 250 of the revenue act of 1921, Hood Rubber Company and affiliated companies, of Watertown, Mass., and the Commissioner of Internal Revenue hereby consent to the determination, assessment, and collection of the amount of income, excess-profits, or war-profits taxes due under any return made by or on behalf of the said companies for the year nineteen hundred and eighteen under the revenue act of 1921, or under prior income, excess-profits, or war-profits tax acts. * * * This waiver is in effect from the date it is signed by the taxpayer and will remain in effect for a period of one year after the expiration of the statutory period of limitation, or the statutory period of limitation as extended by any waivers already on file with the bureau, within which assessment of taxes may be made for the year or years mentioned.

An additional tax of $39,043.99 was assessed on March 18, 1925, and collected by distraint on December 15, 1926. (R. 15–16.)

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Claim for refund was filed and rejected. (R. 16.) The taxpayer brought action against the Collector in the District Court for the District of Massachusetts to recover the tax on the ground that both the assessment and the collection thereof were barred by the statute of limitations. (R. 2–5.) A trial by jury was waived by written stipulation. (R. 14.) The District Court did not decide whether the period began to run from the filing of the tentative return or from the filing of the completed return, but held that the collection of the tax was barred because the waiver constituted a contract which required that the Government assess and also collect the additional tax within six years after the filing of the return, and that Section 278 (d) of the Revenue Act of 1924 did not enlarge the collection period specified in the waiver. (R. 18–20.) It accordingly entered judgment for the taxpayer. (R. 18.)

On appeal the Circuit Court of Appeals did not consider the point upon which the District Court based its decision, but affirmed its judgment on the other issue, holding that the five year period of limitations began to run at the time of the filing of the tentative return and that both the assessment and collection of the tax were too late. (R. 25–31.) In this case, therefore, the Government is the petitioner before this Court.

SUMMARY OF ARGUMENT

The Revenue Acts, in providing that the period for the determination and assessment of taxes shall begin with the filing of the taxpayer's income tax return, contemplate *the return* required by those Acts. The so-called tentative return filed in these cases by no means meets the requirements of the statute. It does not purport to state specifically the items of gross income and the deductions and credits allowed, but merely contains the taxpayer's estimate of the total tax. Such a return furnishes no information to the Commissioner of Internal Revenue for making an assessment against the taxpayer. That information which furnishes the basis for an assessment is contained only in a completed return, and it follows that the period for assessment should begin to run only from the filing of a completed return.

This being true, the assessment in each of the instant cases was made within the statutory period as extended by waiver and subsequent to the enactment of the Revenue Act of 1924. The period of limitations for the collection of the tax was controlled therefore in case No. 118 by Section 278 (d) of the Revenue Act of 1924 and in case No. 414 by Section 278 (d) of the Revenue Act of 1926, which authorize collection at any time within six years from the date of the assessment. The instrument executed by the taxpayer and the Commissioner of Internal Revenue, pursuant to statute, was merely

a consent in writing to an extension of the existing period of limitations.

ARGUMENT

I

THE PERIOD OF LIMITATIONS FOR THE ASSESSMENT AND COLLECTION OF TAXES PROVIDED BY SECTION 250 (D) OF THE REVENUE ACT OF 1921 DOES NOT BEGIN AT THE TIME OF THE FILING OF A TENTATIVE TAX RETURN ON FORM 1031T.

On the question of whether the period of limitations for the determination, assessment and collection of taxes begins to run from the filing of a tentative return or from the filing of a completed return, there is a conflict of opinion. In the *Hood case* (No. 414), the Circuit Court of Appeals for the First Circuit held that the filing of a tentative return starts the period. This view of the question was also taken in *Rasmussen* v. *Brownfield-Canty Carpet Co.* (C. C. A. 9th), 31 F. (2d) 89 (in which two judges refrained from expressing an opinion on the point), and in *Brandon Corporation* v. *Jones* (E. D. S. C.), 33 F. (2d) 969.

On the other hand, the Circuit Court of Appeals for the Fifth Circuit, in the *Florsheim Case* (No. 118), and the Court of Claims in *Oak Worsted Mills* v. *United States,* decided December 2, 1929 (not yet reported), have held that the period of limitations begins to run only from the filing of a completed return. The same view has been adopted by the Board of Tax Appeals. *Appeal of Dallas Brass & Copper Co.,* 3 B. T. A. 856; *Appeal of Mattea-*

wan Manufacturing Co., 4 B. T. A. 953; *Appeal of Boston Hide & Leather Co.*, 5 B. T. A. 617; *Pilliod Lumber Co.* v. *Commissioner*, 7 B. T. A. 591; *Corona Coal & Coke Co.* v. *Commissioner*, 11 B. T. A. 240.

We submit that the decision of the Circuit Court of Appeals in the *Hood case* is erroneous and that the *Florsheim case* represents the better view.

Section 239 of the Revenue Act of 1918 provides that every corporation shall make a return "stating specifically the items of its gross income and the deductions and credits allowed by this title." The purpose of such a return is to furnish the taxing authorities some basis for making an assessment against the taxpayer. *Paso Robles Mercantile Co.* v. *Commissioner* (C. C. A. 9th), 33 F. (2d) 653 (certiorari denied October 21, 1929). The statute places upon the taxpayer the burden of fixing the time when the period of limitations begins to run in his case. That time is when the return defined by Section 239, *supra*, is filed. Anything short of compliance with the requirements of that section would fail to make a return the return required by the statute. As was said in *Botany Mills* v. *United States*, 278 U. S. 282, 289: "When a statute limits a thing to be done in a particular mode, it includes the negative of any other mode."

The tentative return in the form filed disclosed insufficient information to enable the Commissioner to make an assessment, but contained merely the taxpayer's estimate of the total tax. If this were considered the return required by law it would

be impossible for the Commissioner of Internal Revenue to comply with Section 250 (b) of the Revenue Act of 1918, which provides that he shall examine the return and determine whether the correct amount of tax is greater or less than shown. Under the holding of the Circuit Court of Appeals in the *Hood Case,* the filing of a tentative return would set the period of limitations in motion and the five-year period for assessment might well expire, even though the Commissioner had no available information from which to determine the correct amount of the tax.

The views of the Government are well expressed in the following language from the opinion of the Court of Claims in the *Oak Worsted Mills case, supra:*

> The Board of Tax Appeals has consistently held in a number of cases that the filing of the so-called tentative return did not start the running of the statute of limitations. See *Matteawan Mfg. Co.,* 4 B. T. A. 953. In this conclusion we concur for many reasons which will require a review of the proceedings which lead up to the filing of the tentative return, in order to ascertain its purpose and what was understood with reference thereto by both the Bureau of Internal Revenue and the taxpayer. The "revenue act of 1918," was not approved until February 24, 1919. It was quite plain to everyone that large business concerns and individuals hav-

ing large business interests would have great difficulty in filing a return within the time required by law, and the Bureau of Internal Revenue would be deluged with requests for extension of time for filing returns. In fairness to the taxpayers, the most of these applications would have to be granted. The result would be to postpone the payment of taxes in such amount that the Government might become embarrassed for want of revenues, for although the World War was over the Government was still being carried on at an enormous expense. In order to overcome this difficulty a plan was devised which provided the needed funds for the Government and certainly was a valuable concession to the taxpayers who brought themselves within its terms, by granting them an extension of time for filing complete returns. A circular was issued by the commissioner on February 27, 1919, giving the particulars of this plan as follows:

"Income taxpayers, both corporation and individual, were today granted by the Internal Revenue Bureau further relief with respect to the filing of their completed tax returns for 1918. The statement that the taxpayer is unable by March 15 to execute and file the complete return will be accepted, under the new procedure, as sufficient reason for extending for forty-five days the time for filing complete income and excess-profits returns, provided in every case the taxpayer pays on or before March 15, at least 25% of the estimated amount of the tax due."

It further stated that a supply of blanks for the use of taxpayers would be furnished for making a tentative return, and that the due date for the payment of taxes would not be extended nor would the taxpayer be relieved of interest if the amount paid was short of the amount eventually found due. The blank form furnished to and used by plaintiff was headed, "Tentative Return and Estimate of Corporation Income and Profits Taxes and Request for Extension of Time for Filing Return," and contained no statement whatsoever showing the gross income, deductions, invested capital, or other details necessary for a proper determination of plaintiff's tax liability. It merely estimated the tax to be $80,000.00 and accordingly $20,000.00 was paid on the taxes. It specifically requested an extension of time for filing the "return" and in this connection we are at a loss to understand what return could possibly be meant except the return required by law. The tentative return was not only not required by the law but there was no provision in the law for it. It was merely an invention of the commissioner and its purpose was to give the taxpayer an extension of time for filing the return required by law and at the same time obtain the needed funds for the Government. The statute (section 250, act of 1918) provided that the tax shall be assessed within five years "after the return was due or was made." What return? The return not authorized by law and not referred to in the statutes? Clearly not. It

was the return which the law required and which was not made by the tentative return. The return on which the statute of limitations is made to depend is the return required by section 239, which is very different from the so-called tentative return. In this connection we have no reference to returns where the taxpayer attempts to comply with the law but through error or mistake does not completely conform to its requirements. We have here a case where there was no pretense as far as making the return was concerned that the law was being complied with. There was merely enough done so that the commissioner would grant the extension of time.

If we look at the matter from the standpoint of equity between the Government and the taxpayer we can come to no other conclusion. The Government had five years in which to make an assessment on a different basis from the return, but surely this ought to be from the time when the taxpayer makes such a return as will enable the bureau to get at least some elementary knowledge as to how much tax he ought to pay. We think no one would contend that the taxpayer could merely file this tentative return and stop there without filing another and completed return but if the contention of the plaintiff is correct and this was a real return in the sense that the word "return" is used in the statute, nothing else was required.

It is argued that if the tentative return was not a return at all but merely an application or an agreement for an extension of time, the taxpayer was not bound to pay the first installment of his taxes until he filed the completed return. This argument overlooks the fact that the whole proceeding was a concession to the taxpayer beyond any requirement of the law, for the commissioner might grant or refuse an extension in his discretion, and having that right he could prescribe the terms on which an extension should be granted. The proposition on the part of the commissioner was simply that if the taxpayer would file an estimate of his taxes and a request for extension of time for filing a return and make payment of one-fourth the estimated tax, the extension would be granted, and he had a right to make these requirements.

It is also argued that the Government is taking inconsistent positions; that it says at one time that the tentative return was a return and then when its interests require the contrary, says it is no return, but we find nothing inconsistent in its position. It has at no time stated that the so-called tentative return would be considered as the return required by law. On the contrary, the fact that an extension of time was granted for filing a complete return shows very clearly that it did not so consider it, otherwise no extension of time would have been necessary; and while we do not think it is material what the taxpayer understood, we are

unable to see how it could have understood otherwise. The only meaning given in the dictionary to the word "tentative" which would at all apply to the situation under consideration is "experimental," and while this meaning may apply to some features of the case we are inclined to think that the common or colloquial meaning of the word "tentative" in such situations is with reference to something that will do or will answer for the time being but no further.

For the reasons above stated we concur in the view taken upon this question by the Board of Tax Appeals and by the Circuit Court of Appeals in the case of *Florsheim Bros. Dry Goods Co.* v. *United States,* 29 Fed. (2d) 895, and hold that the limitation did not begin to run until the completed return was filed and that the tax in question was assessed within the period prescribed by the statute.

The decision in the *Paso Robles case, supra,* and of the Circuit Court of Appeals for the Fifth Circuit in *Willingham Loan & Trust Co.* v. *Commissioner,* decided November 22, 1929 (not yet reported), are consistent with the views expressed above. In the *Paso Robles case* the taxpayer kept its books upon the basis of a fiscal year but filed no return covering its fiscal year ended January 31, 1919. It did, however, file a return for the calendar year 1918, which included eleven months of the fiscal year, and a year later it filed a return for the succeeding calendar year. The Circuit Court of

Appeals for the Ninth Circuit held that the period for assessment for the fiscal year ending January 31, 1919, did not begin to run from the date of filing of the first return. Certiorari was denied, No. 406, October Term, 1929.

In the *Willingham Loan & Trust Company case* the taxpayer kept its books on a monthly basis and closed its books on May 31 annually, but it filed returns upon the calendar year basis for the years 1919, 1920 and 1921. The Commissioner of Internal Revenue required returns to be made on the fiscal year basis ending May 31. The Board of Tax Appeals held that the period of limitations began to run from the date of the filing of the last calendar year return covering the period of time included in the respective fiscal years. The Circuit Court of Appeals affirmed the Board upon this point, saying in its opinion:

> On the respective dates of the filing of the returns on the annual basis the Commissioner had before him accurate data upon which to consider deficiencies and make assessments based on the fiscal years. This is not inconsistent with our ruling in *Florsheim Bros. Dry Goods Co., Ltd.*, vs. *United States*, 29 F. (2d) 895, as in that case the taxpayer had first filed a tentative return in which the amount of taxes was estimated and the Commissioner did not have sufficient data before him upon which to make an assessment until the complete return was filed.

The authorities cited by petitioner in the *Florsheim Case* (Br. pp. 28–30, 37–41) holding that the statute of limitations begins to run from the filing of an original return and not from the subsequent filing of an amended return, are clearly distinguishable. In those cases the original return contained sufficient information to enable the Commissioner to make an assessment and constituted a substantial compliance with the statutory requirements. The amended or supplemental return had no statutory recognition, but was filed solely for the purpose of correcting errors and related back to the original return.

II

A TAX ASSESSED WITHIN THE STATUTORY PERIOD AS EXTENDED BY WAIVER AND SUBSEQUENT TO THE ENACTMENT OF THE REVENUE ACT OF 1924, MAY BE COLLECTED, PURSUANT TO SECTION 278 (d) OF THAT ACT, AT ANY TIME WITHIN SIX YEARS OF THE ASSESSMENT

If, as we contend, the period of limitations did not start to run until the filing of the completed return, the assessments in the two cases before the Court were made within the statutory period, as extended by waiver, and subsequent to the effective date of the Revenue Act of 1924 (June 2, 1924). We submit, therefore, that the period of limitations for the collection of these taxes was controlled by Section 278 (d) of the Revenue Act of 1924 in the *Florsheim case* and by the Revenue Act of 1926 in the *Hood case,* each of which provides that

the tax may be collected at any time within six years from the date of the assessment. This view is in accord with the decision of this Court in *Russell* v. *United States,* 278 U. S. 181, and is the view expressly taken by the Circuit Court of Appeals for the Fifth Circuit in the *Florsheim Case* and in *United States* v. *Crooks,* 18 F. (2d) 449, by the Circuit Court of Appeals for the Second Circuit in *Loewer Realty Co.* v. *Anderson,* 31 F. (2d) 268, *Greylock Mills* v. *Commissioner,* 31 F. (2d) 655, and *L. Loewy & Son* v. *Commissioner,* 31 F. (2d) 652, and by the Circuit Court of Appeals for the Eight Circuit in *Aiken* v. *Commissioner,* decided October 25, 1929 (not yet reported).

It seems possible to reach a different conclusion only by accepting the reasoning of the District Court in the *Hood case,* which construed the waiver executed by the Commissioner and the taxpayer as a contract by which the Commissioner agreed to collect the tax within a specified time and which can not be varied by subsequent legislation. (R. 20.) In that case the Circuit Court of Appeals for the First Circuit did not pass upon this point. (R. 26.)

We submit that the waiver is merely a consent in writing, pursuant to statute, to the extension of the statutory period for the assessment of taxes. The Commissioner of Internal Revenue agrees to do nothing and incurs no obligation under the instrument.

In the *Florsheim case*, the Circuit Court of Appeals construed the waiver as follows (R. 40):

> The consent in writing simply served to enlarge the period of limitations and otherwise to leave unchanged the provisions of law relating to collection as well as to determination and assessment of the taxes. The form adopted is in strict compliance with section 250 (d) of the Act of 1921, and it was not intended by that section to authorize an agreement by the commissioner to change the existing rights of the parties. Postponement of the period of limitation was all that was authorized by the law or attempted by the consent in writing.

In the case of *Loewer Realty Co.* v. *Anderson, supra,* the court said (31 F. (2d) 268, 270):

> It is objected that the waiver was without consideration, but the statute requires nothing but a consent, without mentioning consideration, and the taxpayer should not in any event be allowed to repudiate a consent upon which the Commissioner has relied.

In *Bank of Commerce* v. *Rose* (N. D. Ga.), 26 F. (2d) 365, the court said (p. 366):

> But it is now urged that the written consent executed before the passage of the Revenue Act of 1924 was a sort of contractual limitation affecting both the assessment and collection of the tax and limiting both to one year after April 19, 1924. Such a construction can not be given to the paper. No authority has been vested by law in the Commissioner or Collector of Internal Revenue

to bind the government as to limitations, but only an authority to accept the consent or waiver on the part of the taxpayer respecting the limitations that Congress had fixed. On the expiration of the consent, action of the tax officers, if barred, would be barred by virtue of the law and not by force of the contract of waiver. Notwithstanding the waiver, Congress had full power to modify the limitation laws or to repeal them altogether. The taxpayer has no vested right not to pay his taxes because of limitations. The acts of limitation are of grace only. I see nothing in the waiver agreement to prevent application of the act of 1924. The collection was therefore lawfully made.

See also *Stange* v. *United States,* decided by the Court of Claims November 4, 1929 (not yet reported).

CONCLUSION

It is respectfully submitted that the judgment below in the *Florsheim case* (No. 118) should be affirmed and the judgment in the *Hood case* (No. 414) should be reversed.

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JANUARY, 1930.

APPENDIX

STATUTES AND REGULATIONS INVOLVED

The pertinent provisions of the Revenue Act of 1918, c. 18, 40 Stat. 1057, 1075, 1081, 1082, 1083, are as follows:

> SEC. 239. That every corporation subject to taxation under this title and every personal service corporation shall make a return, stating specifically the items of its gross income and the deductions and credits allowed by this title. * * *
>
> SEC. 241. (a) That returns of corporations shall be made at the same time as is provided in subdivision (a) of section 227.
>
> * * * * *
>
> SEC. 227. (a) That returns shall be made on or before the fifteenth day of the third month following the close of the fiscal year, or, if the return is made on the basis of the calendar year, then the returns shall be made on or before the fifteenth day of March. The Commissioner may grant a reasonable extension of time for filing returns whenever in his judgment good cause exists and shall keep a record of every such extension and the reason therefor. Except in the case of taxpayers who are abroad, no such extension shall be for more than six months.
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SEC. 250. (b) As soon as practicable after the return is filed, the Commissioner shall examine it. If it then appears that the correct amount of the tax is greater or less than that shown in the return, the installments shall be recomputed. If the amount already paid exceeds that which should have been paid on the basis of the installments as recomputed, the excess so paid shall be credited against the subsequent installments; and if the amount already paid exceeds the correct amount of the tax, the excess shall be credited or refunded to the taxpayer in accordance with the provisions of section 252.

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(d) Except in the case of false or fraudulent returns with intent to evade the tax, the amount of tax due under any return shall be determined and assessed by the Commissioner within five years after the return was due or was made, and no suit or proceeding for the collection of any tax shall be begun after the expiration of five years after the date when the return was due or was made. * * *

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The pertinent provisions of the Revenue Act of 1921, c. 136, 42 Stat. 227, 265, are as follows:

SEC. 250. (d) The amount of income, excess-profits, or war-profits taxes * * * due under any return made under this Act for prior taxable years or under prior income, excess-profits, or war-profits tax Acts, * * * shall be determined and assessed

within five years after the return was filed, unless both the Commissioner and the taxpayer consent in writing to a later determination, assessment, and collection of the tax; and no suit or proceeding for the collection of any such taxes * * * shall be begun, after the expiration of five years after the date when such return was filed * * *

The pertinent provisions of the Revenue Act of 1924 (effective June 2, 1924), c. 234, 43 Stat. 253, 299, 301, are as follows:

SEC. 277. (a) Except as provided in section 278 * * *

(2) The amount of income, excess-profits, and war-profits taxes imposed by * * * the Revenue Act of 1918 * * * shall be assessed within five years after the return was filed, and no proceeding in court for the collection of such taxes shall be begun after the expiration of such period. (U. S. C. Title 26, Sec. 1057.)

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SEC. 278. (c) Where both the Commissioner and the taxpayer have consented in writing to the assessment of the tax after the time prescribed in section 277 for its assessment the tax may be assessed at any time prior to the expiration of the period agreed upon. (U. S. C. Title 26, Sec. 1060.)

(d) Where the assessment of the tax is made within the period prescribed in section 277 or in this section, such tax may be col-

lected by distraint or by a proceeding in court, begun within six years after the assessment of the tax. * * * (U. S. C. Title 26, Sec. 1061.)

(e) This section shall not (1) authorize the assessment of a tax or the collection thereof by distraint or by a proceeding in court if at the time of the enactment of this Act such assessment, distraint, or proceeding was barred by the period of limitation then in existence, or (2) affect any assessment made, or distraint or proceeding in court begun, before the enactment of this Act. (U. S. C. Title 26, Sec. 1062.)

SEC. 280. If after the enactment of this Act the Commissioner determines that any assessment should be made in respect of any income, war-profits, or excess-profits tax imposed by the Revenue Act of 1916, the Revenue Act of 1917, the Revenue Act of 1918, or the Revenue Act of 1921, or by any such Act as amended, the amount which should be assessed (whether as deficiency or as interest, penalty, or other addition to the tax) shall be computed as if this Act had not been enacted, but the amount so computed shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including the provisions in case of delinquency in payment after notice and demand) as in the case of the taxes imposed by this title, except as otherwise provided in section 277. (U. S. C. Title 26, Sec. 1064.)

The Revenue Act of 1926, c. 27, 44 Stat. 9, 59 (effective Feb. 26, 1926), provides as follows:

> SEC. 278. (d) Where the assessment of any income, excess-profits, or war-profits tax imposed by this title or by prior Act of Congress has been made (whether before or after the enactment of this Act) within the statutory period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court (begun before or after the enactment of this Act), but only if begun (1) within six years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the taxpayer. (U. S. App. Title 26, Sec. 1061.)

Articles 443 and 444 of Treasury Regulations 45 (1920 Ed.) read as follows:

> ART. 443. *Extension of time by collector.*— It is important that the taxpayer render before the return due date a return as complete and final as it is possible for him to prepare. However, in cases of sickness or absence collectors are authorized to grant an extension of not exceeding 30 days, where in their judgment such further time is actually required for the making of an accurate return. See article 1002. The application for such extension must be made prior to the expiration of the period for which the extension is desired. The absence or sickness of one or more officers of a corporation at the time the return is required to be filed will not be ac-

cepted as a reasonable cause for failure to file the return within the prescribed time, unless it is satisfactorily shown that there were no other principal officers available and sufficiently informed as to the affairs of the corporation to make and verify the return. As a condition of granting an extension of time for filing a return the collector may require the submission of a tentative return and estimate of the tax on form 1040–T in the case of individuals, or on form 1031–T in the case of corporations, and the payment of one-fourth of the estimated amount of tax. Where a taxpayer has filed a tentative return and has failed to file a complete return within the period of the extension requested by him the complete return when filed is subject to penalties prescribed for delinquency. Where a tentative return has been filed and no time has been fixed within which a complete return must be filed, the collector may at any time send notice to the taxpayer to file a complete return within a period of time therein specified by him, and a taxpayer who fails to comply with such request will incur the penalties prescribed by statute for delinquency in filing a return.

ART. 444. *Extension of time by Commissioner.*—If before the end of an extension of thirty days granted by the collector an accurate return can not be made, an appeal for a further extension must be made to the Commissioner with a full recital of the causes for the delay. The Commissioner will not grant an additional extension without a

clear showing that a complete return can not be made at the end of the thirty-day period. The Commissioner will grant no such extension beyond the original due date of the third installment of the tax. Either a complete or a tentative return, as complete as possible and giving a ground for assessment of the tax, must be submitted on or before the due date as extended, and the tax shown to be due must be paid with the submission of the return. If a complete return can not be made at that time, the facts must be submitted to the Commissioner for such further action as he deems warranted. In exceptional circumstances the taxpayer may apply originally to the Commissioner for an extension of time.

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